

# Mark D. Stern, P.C.

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May 15, 2006

Civil Clerk George Howarth  
United States District Court  
for the District of Massachusetts  
John Joseph Moakley Courthouse  
1 Courthouse Way, Room 1300  
Boston, MA 02210

Re: Fulton v. Town of Hull, Docket No. 2004 CV 11234 MEL

Dear Mr. Howarth:

It has come to my attention that there is an error/omission in the materials I filed by mail on May 10, 2006, and I would like to point that out to the Court so that Mr. Lampke does not have to trouble himself doing so. I indicated that the Plaintiff should be awarded three times \$499, or \$1,497 for the days he was on call to do snow removal, but not called into work. The proper calculation should be 7.5 hours of overtime on 4 snow days waiting to be called in a workweek where he worked over 40 hours and hence is entitled to pay at an overtime rate of \$23.40, doubled pursuant to 29 U.S.C. Sec. 215(a) and Sec. 216, for a total of **\$1,404**, not \$1,497. This same claim can be considered unpaid wages under Mass. law, and subject to trebling at straight time, which amounts to the same dollar damages. Under *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698, 709-710, 831 N.E.2d 304 (2005), treble damages may be awarded by the judge but are not mandatory.<sup>1</sup>

Cordially,  
  
Mark D. Stern

cc: Boyd Fulton  
James B. Lampke (by fax and mail)

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<sup>1</sup> I failed to discuss the Wiedmann case in discussing the vacation pay claim wherein, as the Court may note, I addressed the question of treble damages under Mass. law only in passing because the Defendant admitted in its answer that an award of treble damages is appropriate on that claim. Nonetheless I apologize for that omission.